IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 988 of 2007

BHERU LAL

V/S

THE PRES.AUTH.CUM S.D.O.NIMBAHERA & ANR.

Mr. SL JAIN, for the appellant / petitioner

Mr. JAGDISH VYAS for Mr. VD VYAS, for the respondent

Date of Order : 9.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

The present writ petition has been filed challenging the proceedings for recovery initiated vide File No. 1/2006 by the Prescribed Authority.

It is contended that earlier proceedings had been taken against the petitioners vide File no. 6 of 2002 order-sheets whereof have been produced as Annexure-1, and therein vide order dt. 26.5.2006 the proceedings had been dropped. However, fresh proceedings have been initiated, and without making any determination rather without proper service of the borrowers recovery proceedings have been commenced which is wholly bad, and the notices have been issued against dead persons.

Learned counsel for the respondent submits that of

course when earlier proceedings were initiated vide File No. 6/2002, they were dropped by the order dt. 26.5.2006 but then a look at the order dt. 26.5.2006 available at page-22 of the paper book shows that those proceedings were dropped only in view of the interim stay granted by this Court in earlier writ petition, and it has also been mentioned in that very order that as and when stay order is vacated by the High Court, the proceedings shall be restored, and further proceedings shall be taken. Then, learned counsel invited my attention to the order-sheets of earlier Writ Petition being No. 6577/2005, file whereof is attached, and available today, and has read to me the order-sheet dt. 18.8.2006 wherein it was specifically ordered that if the petitioner fails to comply with the requirement of that order the interim order dt. 1.6.2006 shall stand vacated and the respondent Bank shall be free to proceed and to take coercive process against the petitioner as might be required, and the requirements of that order was that the petitioner was given last opportunity to deposit a sum of Rs. 20,000/- upto 14.8.2006. It is contended that admittedly that amount has not been deposited, therefore, that order springs into action, and on the face of this, order dt. 26.5.2006 the Prescribed Authority could revive the earlier proceedings and should not have initiated fresh proceedings vide File No. 1/2006.

In view of the above submissions, in my view, it is clear that in Annexure-1 at page-22 when it was already stipulated that in the event of stay being vacated the recovery proceedings shall revive, and there was no occasion for instituting fresh proceedings vide File No. 1/2006 by issuing notice therein.

Accordingly, the proceedings in File No. 1/2006 is quashed. However, it is kept open to the Bank to take further steps in accordance with the order dt. 26.5.2006 in Annexure-1. The writ petition is accordingly allowed in the above manner.

(N P GUPTA),J.

/sushil/